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Applicability: All DDSN State Employees

The language in this policy does not create an employment contract between the employee and the Department of Disabilities and Special Needs (SCDDSN). SCDDSN reserves the right to revise the contents of this policy, in whole or in part.

SECTION I

Purpose:

The purpose of this directive is to establish the Department of Disabilities and Special Needs' (DDSN) policy on the maintenance of an alcohol and drug free workplace and to provide guidelines for handling job performance issues related to alcohol and drug use:

This policy will include: 1) drug testing of department employees when there is reasonable cause to believe an employee is using drugs or is impaired on the job; and 2) a pre-employment drug testing program for all applicants selected for employment in positions in the regional center/community residences which are identified by DDSN as direct-care positions.

This policy does not include procedures for pre-employment, random, reasonable cause, post-accident, and return to duty testing for all selected applicants and employees who are required to possess a commercial driver's license (CDL) in the performance of their job. These procedures are contained in Departmental Directive 334-04-DD.

SECTION II

Policy

Applicable to All DDSN State Employees

1. Management is committed to providing an alcohol and drug free workplace for all employees of the Department of Disabilities and Special Needs.
2. The Director of Human Resource Management (HRM) is assigned the overall responsibility and authority for the implementation and administration of this policy.

- A. The Director of Human Resource Management, upon request, will provide certification to Federal agencies that the department has implemented an effective and viable program to insure an alcohol and drug free workplace.
 - B. The Regional HRM Directors shall coordinate the regional center's Alcohol and Drug Free Workplace Policy.
- 3. The department shall develop and maintain an awareness program to inform employees about the dangers of alcohol and drug abuse in the workplace. Every employee shall receive an initial orientation and be given a copy of the department's alcohol and drug free workplace policy.
- 4. All employees have a responsibility to report observed and suspected violations of this policy to their supervisor or department management. Failure to report may be grounds for disciplinary action.
- 5. The unlawful manufacture, distribution, dispensation, sale, possession, or use of illegal drugs; the possession or use of alcoholic beverages; and the possession of and manufacture or delivery of drug paraphernalia is prohibited on department premises and workplaces.
- 6. Violation of the policy set out in #5 above and/or alcohol or controlled substance impaired behavior on the job shall be viewed as unacceptable personal conduct and shall be cause for disciplinary action up to and including dismissal.
 - A. An employee determined, by administrative or other investigation, to be involved in the unlawful manufacture, distribution, dispensation, or sale of illegal drugs on department premises or workplaces shall be dismissed.
 - B. An employee determined, by administrative or other investigation, to be in possession of alcohol or illegal possession of a controlled substance as well as, possession of and involved in the manufacture or delivery of drug paraphernalia on department premises or workplaces shall receive at least a 3-day suspension and may be required to participate in the Vocational Rehabilitation's Employee Assistance Program (EAP).
 - C. An employee determined, by administrative or other investigation, to be using and/or functioning below acceptable work standards due to alcohol or illegal drugs on department premises or workplaces shall receive at least a written warning and suspension and may be referred to the EAP.
- 7. The department will report violations of criminal drug statutes occurring in the workplace to the appropriate law enforcement authority.
- 8. An employee convicted of any criminal drug statute violation occurring on or off Department property must notify his/her supervisor no later than five (5) calendar days after such conviction. Failure to provide notification will result in automatic dismissal. When required, by the Federal Drug-Free Workplace Act of 1988, department staff shall notify the appropriate federal contracting agency of such a conviction.

9. DDSN staff, in accordance with EAP principles, will support the responsible action of an employee seeking help for an alcohol or controlled substance problem. An employee's efforts to obtain help through the department will be handled in confidence.
10. Disciplinary action, in the form of a written warning, suspension without pay, demotion or dismissal, shall be taken when an employee:
 - A. Refuses to submit to a required drug or alcohol test;
 - B. Fails to attend a scheduled drug or alcohol test;
 - C. Intentionally tampers, or attempts to tamper with a drug or alcohol sample; or
 - D. Produces a confirmed positive alcohol test at 0.04 or above or a verified positive drug test.
11. Substances that may be tested for under this policy include:
 - A. Marijuana/cannabinoids (THC)
 - B. Cocaine metabolites
 - C. Opiates
 - D. Phencyclidine (PCP)
 - E. Amphetamines/methamphetamines.
 - F. Alcohol

Note: Substances to be tested for can be expanded to a 10 panel test only for cases which reasonable cause identifies a need to test for a substance. Employees must be informed of the substances for which they will be tested.

12. An employee who produces a confirmed positive alcohol test at 0.04 or above or a verified positive drug test, if not dismissed, shall receive at least a written warning and suspension; and before the employee is eligible to return to duty must:
 - A. Undergo an evaluation or assessment by a substance abuse professional through the EAP; and
 - B. Satisfactorily complete any rehabilitation process that is recommended through this assessment.
13. Any employee who produces a positive alcohol test of at least 0.02, but less than 0.04, may receive disciplinary action in accordance with DDSN's Standards of Disciplinary Action policy.
14. An employee/applicant who receives a positive drug test may request through the Medical Review Officer, the same or split specimen be tested at another certified laboratory with the cost of such testing at the employee's/applicant's expense. Notification for re-testing of sample must be made within 72 hours upon employee receiving written notice of a positive test result.

15. Applicants or employees with a confirmed positive test will be afforded the opportunity to appeal the results by providing medical data/history for review and assessment by the Medical Review Officer who will make a final determination of the test result.
16. Employees who are dismissed may be referred to the EAP for evaluation or assessment.
17. An employee who tests positive in a second drug or alcohol test shall be immediately dismissed.
18. Should an applicant test positive, they will not be allowed to reapply for employment for a period of one year from the date of the positive test results.
19. When management has reasonable cause to believe an employee is using or is under the influence of alcohol or a controlled substance in violation of this policy, the employee may be required to submit to a drug and/or alcohol test. Such testing must be approved by the Deputy State Director, DISTRICT DIRECTOR or FACILITY ADMINISTRATOR or his/her designee. The testing process shall be provided by qualified personnel and shall involve proper procedures of specimen collection and at least an initial test, with confirmatory testing for an initial positive test. All controlled substance tests other than alcohol tests will be reviewed by a Medical Review Officer.

In addition to the above, the following is applicable to all selected applicants for positions in the Regional Centers/Community Residences which are considered direct-care positions.

1. Mandatory drug testing at the department's expense, shall apply to the final applicant for employment in positions identified by the department as direct-care positions. The offer shall be conditional upon satisfactory test results.
2. A refusal to submit to a drug test or a positive test result that cannot be explained to the satisfaction of the Medical Review Officer and the employing agency shall result in the offer of employment being withdrawn.

SECTION III

Procedures

The following procedures apply when a supervisor has reasonable cause to believe an employee is in violation of the department's Alcohol and Drug Free Workplace policy.

1. Review the circumstances and actions which are the basis for the reasonable cause with your immediate supervisor and HRM director.
2. If the situation warrants, discuss the matter with the employee; but make no accusations of alcohol or drug abuse. If there is a medical condition which may be causing the impairment, the supervisor may grant the employee sick leave to visit his/her personal physician to correct the cause(s) of the impairment. The employee must present a written

statement from the physician, outlining causation, prior to resuming work duties. The supervisor shall keep the HRM director and other appropriate staff informed of developments.

3. If the situation warrants, the employee may be placed on suspension without pay pending investigation. The employee will be given, prior to or within two (2) scheduled workdays after being placed on suspension, written notice of the reason(s) for the investigation.
4. In cases which involve possible unlawful manufacture, distribution, dispensing, selling, or possession of illegal drugs at the workplace, the facility administrator should contact the local law enforcement agency and State Law Enforcement Division.
5. Document the situation as fully as possible. Documentation should include specific dates, times, people involved, behavior, reactions, overall performance and a discussion of the circumstances. Be sure to allow the employee an opportunity to respond to the results of the investigation. When the investigative findings warrant disciplinary actions, follow applicable departmental and State policy and procedures.
6. If referral to the EAP is required, arrange scheduling through the HRM office.
7. If, with the approval of the deputy State director, district director or facility administrator, a drug or alcohol test is warranted, the supervisor, with the HRM director, shall inform the employee that as a condition of employment, management has the right to ask him/her to submit to a drug or alcohol test. The employee shall be advised of:
 - A. The basis for the reasonable cause;
 - B. Methods of testing which may be used;
 - C. Substances which may be identified;
 - D. Importance of cooperating with the collection site personnel;
 - E. Confidentiality of individual test results;
 - F. Consequences of refusing to sign consent forms, failing to submit to testing, failing to report for a specimen collection, or receiving a verified positive drug test result or confirmed positive alcohol test; and
 - G. The appeals process through a Medical Review Officer following a confirmed positive drug test.
8. The HRM director shall initiate a testing process immediately. The employee shall be given verbal and written notification of the time, date and location of test and will be required to sign a "Consent and Acknowledgment" form. (Employee is given a copy of the form and a copy is placed in his/her personnel file.)
9. If the employee refuses to sign the consent form or to undergo testing as scheduled, the supervisor shall take disciplinary action upon consultation with the HRM director in accordance with departmental policy.

10. All drug (controlled substance) testing will be carried out by a laboratory certified by the U. S. Department of Health and Human Services (DHHS) and testing will be conducted via urine specimens.
11. If a non-positive test result occurs, the employee shall be notified immediately by the HRM director. All records surrounding this incident shall be removed from the employee's personnel file. If the test is positive, the director, within 3 days of receiving positive test confirmation, shall inform the employee in writing of the results and proposed action to be taken.
12. The employee who tests positive, if not dismissed, shall be required to participate in the EAP. The HRM director shall contact the EAP counselor to schedule an appointment for the employee. The employee shall be given written notice of the date, place and time of the session.
13. The employee shall be required to sign and date a Release of Information Form prior to being seen by the EAP counselor. A copy of this form shall be given to the employee and a copy retained by the HRM director. This form shall allow the HRM director access to the following information.
 - A. Whether the employee reported to the initial session; and
 - B. Whether the employee is engaged in a treatment program; and
 - C. Whether the employee successfully completed the recommended course of treatment.
14. A copy of the Release of Information Form shall be sent to the EAP counselor as notice that the employee is a mandatory referral.
15. The employee will be granted leave to participate in an appropriate and approved education or treatment program. The employee will be allowed to use accumulated sick, annual leave or leave without pay.
16. Upon successful completion of the EAP recommended course of action, the employee will be returned to work after approval by the HRM director.
17. The employee, upon returning to the work unit, may be subject to aftercare testing.
18. Disciplinary actions resulting from a confirmed positive test result, refusal to participate in a test, altering results, or failure to complete a required referral to an education or treatment program shall be handled in accordance with established DDSN policy for disciplinary action.
19. Alcohol testing will meet industry standards or applicable U. S. DHHS guidelines and testing will be conducted via saliva, blood or breath specimen.
20. All specimens will be collected under chain of custody procedures which include photo identification of the donor and protocols to assure specimen integrity.

21. Positive drug (controlled substance) tests will undergo confirmatory testing by GC/MS.
22. Positive alcohol tests will undergo confirmatory testing by either blood or breath.
23. All drug (controlled substance) and alcohol test results will be maintained in a secure and confidential manner and will not be released without written consent of the applicant or employee except as a result of action initiated by or on behalf of the applicant or employee.

In addition to the above, the following is applicable to all selected applicants for positions in the regional centers/community residences which are considered direct-care positions.

1. Drug testing shall take place during the application process. The test conducted shall be not more than 60 days old; calculated from the time the laboratory reports the results to the date of employment.
2. In order to maintain the effectiveness and reliability of the drug testing process, applicants should not be given more than 24 hours advance notice of the exact testing date and time.
3. Take appropriate action after receiving results of drug testing as follows:
 - A. If the drug test produces a negative result, then proceed with the employment process at the discretion of HRM staff.
 - B. If the drug test produces a positive result, then notify the applicant of such and that their conditional offer of employment is being withdrawn.

SECTION IV

Definitions

For the purposes of this policy:

Applicant - a person, other than a current direct-care employee who transfers, applies for employment or appointment to a direct-care position.

Certified Laboratory - a laboratory certified under the U.S. Department of Health and Human Services. (Mandatory guidelines for federal workplace drug testing programs.)

Collection Site - a designated place where employees present themselves to provide, under controlled conditions, a urine, blood or breath specimen which will be analyzed for the presence of drugs or alcohol.

Collection Site Personnel - a person who instructs and assists individuals in the collection of the requested specimen for drug and/or alcohol testing under specific protocol.

Confirmed Positive Result - the presence of an illicit substance in the pure form or its metabolites at or above the specified cutoff level, identified in two consecutive tests, which employ different testing methods.

Confirmation Test - a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedures. A gas/chromatography/mass spectrometry (GC/MS) shall be used.

Consent and Acknowledgment Form - provides consent for testing and informs the applicant/employee of substances for which they are being tested.

Controlled Substance - a controlled substances in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation at 21 CFR 1300.11 through 1300.15. Major substances for review by this policy shall include marijuana/cannabinoids (THC), cocaine metabolites, opiates, phencyclidine (PCP), and amphetamines/methamphetamines.

Conviction - means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal Drug Statute - means a Federal or State criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substances.

Direct Care Position - a position that has regular contact with the individuals we serve; including, but not limited to, Residential positions, Health Services positions, Housekeeping positions, Food Service positions, and all other Human Services positions.

Drug Test - a chemical, biological or physical analysis or test administered for the purpose of determining the presence or absence of a drug or its metabolites and/or alcohol.

Impaired - shall mean such performance and/or behavior which would indicate to the observer that the employee's ability to handle job assignments safely and efficiently may be compromised.

Initial Drug Test - a sensitive, rapid, and reliable immunoassay procedure to identify negative and presumptive positive specimens.

Medical Review Officer - a licensed physician whose duties include the review and interpretation of positive results from confirmatory testing and who evaluates those results together with medical history or any other relevant biomedical information to verify positive results. This person has knowledge of substance abuse disorders and appropriate medical or forensic training.

Negative Result - the absence of an illicit substance in the pure form or its metabolites in sufficient quantities to be identified by either an initial screen or confirmatory test or as determined by a Medical Review Officer.

Post Accident Test - means a test conducted following all accidents involving motor vehicles where there was loss of life or where the driver receives a moving citation as a result of the accident.

Reasonable Cause Drug Testing - means testing based on a belief that an employee is using or has used alcohol or drugs in violation of the department's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based on, but not limited to, one of the following:

- A. Direct observations of abnormal conduct or erratic behavior by the employee which may render the employee unable to perform his/her job duties or which may pose a threat to safety or health.
- B. A report of observed alcohol or drug use provided by a reliable and credible source.
- C. An on-the-job accident or unusual occurrence/incident where there is evidence to indicate the accident or occurrence, in whole or in part, may have been the result of the employee's use of a controlled substance or alcohol.
- D. Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while working or while on the employer's premises or operating the employer's vehicle, machinery, or equipment.

Refusal To Submit (to an alcohol or drug test) - is the failure to provide an adequate saliva, breath, urine or blood specimen upon request for testing without a valid medical explanation or such conduct which clearly interferes with the testing process.

Release of Information Form - outlines what information will be released to management from an Employee Assistance Program referral and acknowledges to EAP counselors that this is a mandatory referral.

Substance Abuse Professional - encompasses licensed physicians, as well as licensed or certified psychologists, social workers, employee assistance professionals, and alcohol and drug counselors certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) to assess or evaluate an employee who has engaged in prohibited alcohol or drug conduct.

Verified Positive Result - the positive result reported by a Medical Review Officer after the assessment or collection and testing protocols and a determination of no alternate medical explanation for the presence of the controlled substance.

SECTION V

Information contained in this policy which rescinds DDSN Directive 414-02-DD, shall be made available to applicants and current employees and included in orientation training for all new employees.

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(Originator)

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